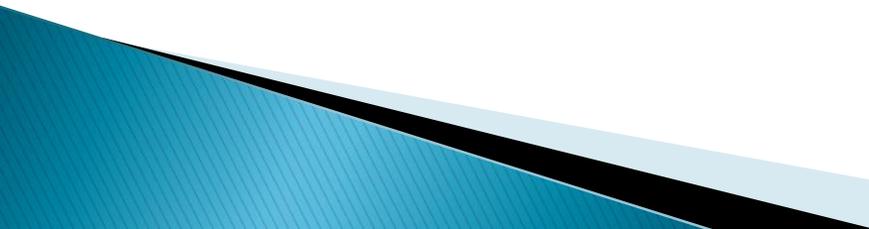


# Legislative Changes to the County Employees Retirement Law of 1937

(AB 197)

Presented by:

Contra Costa County Employees'  
Retirement Association



# Legislative Changes to the County Employees Retirement Law of 1937

## Assembly Bill 197

In September 2012, the legislature passed and the Governor signed into law AB 197, legislation amending the County Employees Retirement Law of 1937 (“CERL”) or (“’37 Act”) (Government Code Sections 31450, *et seq.*)

# AB 197

Amended the CERL definition of  
“compensation earnable.”

(Government Code Section 31461)

# Retirement Benefit Calculation

**CCCERA members' retirement benefit is calculated as follows:**

$$\begin{array}{ccccccc} \text{Final} & & \text{Years of} & & \text{Age at} & & \\ \text{Average} & \times & \text{retirement} & \times & \text{retirement} & = & \text{Retirement} \\ \text{Salary} & & \text{service} & & \text{factor} & & \text{Benefit} \\ & & \text{credit} & & & & \end{array}$$

# “Compensation Earnable”

- ▶ The “final average salary” factor in retirement calculation depends on what is included in “compensation earnable”.
- ▶ It is up to the CCCERA Board of Retirement to determine whether the compensation paid to a CCCERA member by an employer is “compensation earnable” i.e., included in the pension calculation.

# AB 197 amended Sec. 31461 of the Govt. Code by adding:

b) “Compensation earnable” does not include, in any case, the following:

.....

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

.....

(4) Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

c) The terms of subdivision (b) are intended to be consistent with and not in conflict with the holdings in *Salus v. San Diego County Employees Retirement Association* (2004) 117 Cal.App.4th 734 and *In re Retirement Cases* (2003) 110 Cal.App.4th 426.

# Implementation of AB 197

- ▶ Several implementation issues were discussed at the Board of Retirement public meeting on October 10, 2012.
- ▶ For CCCERA members and stakeholders, the implementation of AB 197 is a priority.
- ▶ Currently, CCCERA implements the Retirement Board's policy on "Determining Which Pay Items Are 'Compensation' For Retirement Purposes." The next few slides will illustrate examples.

## Note:

The following examples apply only to those employees with a CCCERA membership date prior to January 1, 2011.

# Example 1: Vacation Pay at Termination

Currently, for CCCERA current members the following is included in “compensation earnable”: Termination pay paid by the employer for employee’s accrued unused vacation. Only that portion earned during the final average salary is included in “compensation earnable.” For most members, this means one year’s worth of vacation accruals.

**Example 1:** Member’s MOU provides member can accrue 20 hours of vacation per month, the equivalent of 240 hours of vacation per year. Member does not have the ability to cash out any unused accrued vacation during employment. Member retires with 400 hours of unused vacation hours. Employer pays the member for the 400 hours. Member selects the last year as the final average salary period.

- **Currently:** Because the maximum the member could accrue during the final average salary period is 240 hours, CCCERA includes 240 hours (out of the 400 hours payoff from the employer) in “compensation earnable.”
- **Under AB 197:** Because member does not have the ability to receive in cash during service payment from the employer for accrued unused vacation, CCCERA would not include any of the 400 hours payoff from the employer at termination in “compensation earnable”

# Example 2: Vacation “Sell Backs”

Currently, for CCCERA current members the following is included in “compensation earnable”: Cash outs (sell backs) of accrued vacation during service. Only those cash outs that are allowed by the employer during the final average period salary are included in “compensation earnable.”

**Example 2:** Member’s MOU provides that member can elect to “sell back” a portion of accrued unused vacation. Member earns 240 hours of vacation per year. During the final average salary period, as allowed by the MOU, member “sold back” 160 hours.

- **Currently:** CCCERA includes the cash payment for the 160 hours in “compensation earnable.”
- **Under AB 197:** Because member has the ability to receive in cash during service payment from the employer for accrued unused vacation, CCCERA would include the payment for 160 hours, regardless of when paid.

# Example 3: Vacation Sell Backs and Termination Pay

**Example 3:** In addition to the “sell backs” allowed during service, the member receives termination vacation pay.

- **Currently:** CCCERA includes both payments in “compensation earnable,” i.e., 240 hours from the termination pay and 160 hours from the during service cash outs paid during the final average salary period. A total of 400 hours of vacation pay is included in “compensation earnable.”
- **Under AB 197:** CCCERA would allow the maximum accrual the member was able to earn and receive in cash during service during the final average salary period (160 hours), regardless of when the payment is made.

# Example 4: Sick Leave Cash Out at Termination

**Example 4:** At termination member receives payment for accrued unused sick leave but was unable to sell back sick leave accruals during service.

- **Currently:** CCCERA includes in “compensation earnable” the termination pay for accrued unused sick leave up to the maximum that the member could accrue during the final average salary period.
- **Under AB 197:** CCCERA would allow the maximum accrual the member was able to earn and receive in cash during service during the final average salary period (160 hours), regardless of when the payment is made.

**Note:** For all CCCERA members, unused sick leave counts as **service credit** at termination. Because this is not a cash payment to the employee, but rather, service credit, this item is not impacted by AB 197. (Govt. Code § 31641.01.)

# Reminder:

The examples used above to illustrate CCCERA's current "compensation earnable" practice apply to current members except those with a CCCERA membership date of January 1, 2011 or after, pursuant to the Board of Retirement action taken on March 10, 2010.

Additionally, new CCCERA members under PEPRA are subject to a different provision, GC § 7522.34, which excludes both termination pay and "sell backs" (cash outs).

# AB 197 – Effective 1 / 1 / 2013

- ▶ AB 197 amended the definition of “compensation earnable” to exclude:
  - “Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off . . . in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.” (new Government Code Sec. 31461(b)(2).)

and

- “Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.” (new Government Code Sec. 31461(b)(4).)
- ▶ AB 197 takes effect on January 1, 2013
- ▶ The statutory changes to “compensation earnable” do not appear to apply to anyone already in retirement status by December 31, 2012.